



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9759-4]

California State Motor Vehicle Pollution Control Standards; Notice of Waiver of Clean Air Act Preemption; California's 2010 Model Year Heavy-Duty Vehicle and Engine On-board Diagnostic Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: EPA has granted the California Air Resources Board (CARB) its request to confirm that its amendments to California's heavy-duty vehicle and engine on-board diagnostic (HD OBD) requirements that relax the standards for 2010-2012 model years (MYs) are within the scope of a previous waiver of preemption of the Clean Air Act (Act). The amendments to the HD OBD requirements for MY 2013 and later are granted a new waiver of preemption.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA-HQ-OAR-2011-0816. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW, Washington DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally it is open Monday through Friday, excluding holidays. The telephone number for the Reading room is (202) 566-1744. The Air and Radiation Docket and Information Center's Web site is <http://www.epa.gov/oar/docket.html>. The electronic mail (email) address for the Air and Radiation Docket is: a-and-r-Docket@epa.gov, the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through

the federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the www.regulations.gov Web site, enter EPA-HQ-OAR-2011-0816 in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business information ("CBI") or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality ("OTAQ") maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Telephone: (202) 343-9256. E-Mail Address: Dickinson.David@EPA.GOV

Supplementary Information: I confirm that the amendments to California's HD OBD requirements that relax the requirements for the 2010-2012 MYs are within the scope of a previous waiver of Clean Air Act preemption. I am also granting a new waiver of Clean Air Act preemption for the amendments to California's HD OBD requirements that create more stringent requirements for MYs 2013 and later pursuant to section 209(b) of the Act.¹

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive preemption for California to enforce new motor vehicle emissions standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as

¹ The CARB Board approved the OBD amendments by Resolution 09-37 on May 28, 2009 and the California Office of Administrative Law approved the regulations on May 18, 2010.

protective of public health and welfare as the applicable Federal standards, whether California needs State standards to meet compelling and extraordinary conditions, and whether the standards are consistent with section 202(a) of the Act.

If California acts to amend a previously waived standard or accompanying enforcement procedure, the amendment may be considered within the scope of the previously granted waiver, provided that it doesn't undermine California's determination that its standards, in the aggregate, are at least as protective of public health and welfare as the applicable Federal standards, does not affect its consistency with section 202(a) of the Act, and raises no new issues affecting EPA's previous waiver decisions.

In its request letter to EPA, CARB asked EPA to confirm that the HD OBD amendments that relax the requirements for the 2010-2012 MYs are within the scope of an earlier waiver. CARB stated that these amendments will not cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. EPA received no information during this proceeding that questioned whether CARB's HD OBD requirements are less protective than applicable Federal standards. Therefore, I cannot find that CARB's HD OBD regulations would cause the California motor vehicle emissions standards, in the aggregate, to be less protective of public health and welfare than applicable Federal standards.

CARB stated in its request letters that the amendments do not raise any concerns of technological infeasibility, inadequate lead-time or imposition of any inconsistent certification requirements. Because EPA has not received any adverse public comment, or any other relevant information on this issue, I cannot find that CARB's HD OBD regulations, as noted, would cause the California motor vehicle emission standards to be inconsistent with section 202(a).

EPA has received no comments on whether the amendments to California's HD OBD regulations that relax the requirements for the 2010-2012 MYs raise any new issues. Therefore, I find that these particular amendments do not raise any new issues.

Given the above, EPA can confirm that the amendments that relax the requirements for the 2010-2012 MYs are within the scope of the previous waiver of preemption.

In its request letter to EPA, CARB also asked EPA to confirm that the HD OBD amendments for MYs 2013 and later are within the scope of an earlier waiver. EPA cannot confirm that the amendments to California's HD OBD requirements that create new, more stringent standards for 2013 and later model year engines, and the new enforcement procedures are within the scope of the previous waiver of preemption. EPA has stated in prior waiver and authorization determinations that increases in the stringency of standards are "new issues" for which full waiver or authorization is required.² Because the amendments for MY 2013 and later increase the stringency of the standards, they are not within the scope of the previous waiver, and must be evaluated under the standards for a full waiver of preemption.

In its request letter to EPA, CARB asked EPA, in the alternative, to grant a full waiver of preemption for the amendments that create new, more stringent requirements for 2013 and later MYs, and the accompanying enforcement procedures. Therefore, EPA has applied the traditional, full waiver analysis to these particular amendments.

CARB stated in its request that the HD OBD regulations, as amended, are at least as protective of public health and safety as the comparable Federal standards. EPA has not received any information suggesting that the new standards are any less protective of public health and safety as the comparable Federal standards. Therefore, I cannot find that CARB acted arbitrarily

² See, e.g., 71 FR 44027 at 44028 (August 3, 2006) ("EPA believed it possible that CARB's amendments do in fact raise 'new issues' as they impose new more stringent standards...").

and capriciously in determining that its OBD regulations would not cause the California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable Federal standards.

CARB has repeatedly demonstrated the existence of compelling and extraordinary conditions in California. EPA has not received any adverse comments to suggest that California no longer suffers from compelling and extraordinary conditions. Because EPA has not received adverse public comment, or any other relevant information, challenging the need for CARB's own motor vehicle pollution control program based on lack of compelling and extraordinary conditions for the purposes of this waiver request, I cannot deny the waiver based on a lack of compelling and extraordinary conditions.

CARB stated in its request letter that the amendments and accompanying enforcement procedures do not raise any concerns of technological infeasibility, inadequate lead time or impose any inconsistent certification requirements. Because EPA has not received adverse public comment, or any other relevant information regarding the consistency of California's HD OBD amendments with section 202(a) of the Clean Air Act, I cannot find that CARB's HD OBD regulations, as noted, would cause the California motor vehicle emissions standards to be inconsistent with section 202(a).

Therefore, as to the amendments that create new, more stringent requirements for the 2013 and later MYs, and the new enforcement procedures, there is insufficient basis to deny a full waiver of preemption under the criteria set forth in section 209(b) of the Act.

A full explanation of EPA's decision is contained in a Decision Document which may be obtained as explained above.

The Administrator has delegated the authority to grant California section 209(b) waivers of preemption to the Assistant Administrator for Air and Radiation. After evaluating California's HD OBD amendments and CARB's submissions, EPA is taking the following actions. First, EPA is confirming that the amendments that relax the HD OBD requirements for 2010-2012 MYs are within the scope of the previous waiver of preemption. Second, EPA is granting a new waiver of preemption for the amendments to the HD OBD regulations that create new, more stringent requirements for MY 2013 and later, along with the accompanying enforcement procedures.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce heavy-duty vehicles and engines for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability for the purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by [INSERT DATE 60 DAYS FROM DATE OF FR PUBLICATION]. Judicial review of this action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. § 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. § 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for the purposes of 5 U.S.C. § 804(3).

Dated: November 29, 2012.

Gina McCarthy,
Assistant Administrator,
Office of Air and Radiation.

[FR Doc. 2012-29792 Filed 12/07/2012 at 8:45 am; Publication Date: 12/10/2012]